



**The Comptroller General
of the United States**

Washington, D.C. 20548

TIMMERMAN

Decision

Matter of: Western Roofing Service

File: B-234314.2

Date: May 22, 1989

DIGEST

Bidder's designation of a roofing system manufacturer that does not make a product meeting the solicitation's specifications does not render the bid nonresponsive where the bidder took no exception to the solicitation. The information regarding the manufacturer concerns the bidder's ability to provide a roofing system meeting the specifications and, as a matter of responsibility, may be provided any time before award.

DECISION

Western Roofing Service protests the proposed award of a contract to Scholten Roofing Service Company under invitation for bids (IFB) No. N62474-87-B-2263 issued by the Navy for roof repairs at the Naval Aviation Depot, Alameda, California. Western Roofing contends that Scholten's bid should be rejected as nonresponsive.

We deny the protest.

The IFB required a certification by the manufacturer of the roofing system selected by the bidder indicating that the bidder was a "licensed applicator" of the system and was capable of obtaining the manufacturer's 5-year warranty. At bid opening on February 17, 1989, Scholten's was the lowest of the three bids submitted. It is undisputed that the manufacturer initially selected by Scholten and which provided the certification does not produce a system that meets the IFB's specifications. Contracting officials met with Scholten after bid opening to verify its bid. According to the agency, Scholten confirmed that it was capable of performing the contract according to the specifications and stated that if the manufacturer it had listed did not meet the specifications, it would use a different manufacturer and submit a new certification. Scholten subsequently provided a certification from a manufacturer whose products meet the specifications.

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Western Roofing argues that Scholten's bid should be found nonresponsive since the manufacturer's certification is a matter of responsiveness that may not be corrected after bid opening. The protester maintains that allowing Scholten to submit a new certification amounts to an improper waiver of a solicitation specification. The Navy contends that the requirement for the manufacturer's certification involves bidder responsibility rather than bidder responsiveness and argues that the certification need not be submitted with the bid but may be submitted at any time prior to award. We agree with the agency.

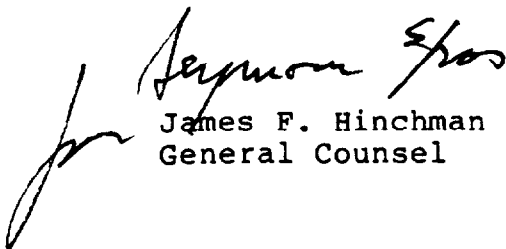
Responsiveness concerns whether a bidder has unequivocally offered to provide the supplies or services in conformity with all material terms and conditions of a solicitation. Midwest Contractors, Inc., et al., B-231101 et al., Aug. 8, 1988, 88-2 CPD ¶ 118. Responsibility, on the other hand, refers to a bidder's apparent ability and capacity to perform. Montgomery Elevator Co., B-220655, Jan. 28, 1986, 86-1 CPD ¶ 98.

Paragraph 3.2, section 07510-2 of the IFB required that the bidder obtain a 5-year manufacturer's warranty. There was no IFB requirement for the submission of data concerning the type of roofing material to be used and no evidence in the record that shows that Scholten took exception to this requirement or to any other IFB requirement.

The record shows that the purpose of the certification was to ensure that the contractor was capable of performing the work and capable of obtaining a 5-year warranty. This type of information which does not concern the bidder's legal obligation to provide the warranty is a matter of responsibility since it relates to the bidder's ability and how it intends to perform. Jersey Maid Distributors, Inc., B-217307, Mar. 13, 1985, 85-1 CPD ¶ 307. Consequently, Scholten's obligation, if awarded the contract, to provide a roof in conformity with the solicitation requirements, including the 5-year warranty, was not changed by its designation of a manufacturer who did not produce the required product or its substitution of another product manufacturer after bid opening. Its bid is therefore responsive. See The ARO Corp., B-222486, June 25, 1986, 86-2 CPD ¶ 6. Since the certification is a matter of bidder

responsibility, it may properly be supplied any time before
award. Norfolk Dredging Co., B-229572.2, Jan. 22, 1988,
88-1 CPD ¶ 62.

The protest is denied.

A handwritten signature in cursive script, appearing to read "James F. Hinchman".

James F. Hinchman
General Counsel